

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 103 (Sub-No. 9X)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN JASPER COUNTY, MO. AND CHEROKEE COUNTY, KAN.

Decided: July 22, 2015

The Kansas City Southern Railway Company (KCS) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon two of its branch lines: (1) the Baxter Springs Branch, from milepost 139.01 L at the connection with the KCS main line to the end of the line at milepost 148.51 L near Crestline, Kan., in Jasper County, Mo., and Cherokee County, Kan., a distance of 9.50 miles; and (2) the Waco Branch, from milepost W 139.80 at the connection with KCS main line to the end of the line at milepost W 142.9 in Waco, in Jasper County, Mo., a distance of 2.69 miles. The Rails to Trails Conservancy (RTC) also sought issuance of a notice of interim trail use/rail banking (NITU), which was granted pursuant to the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Notice of the exemption and NITU was served and published in the Federal Register on December 22, 1994 (59 Fed. Reg. 66,048).¹

By joint petition filed on May 19, 1997, RTC and Ozark Regional Land Trust (ORLT) (collectively, petitioners) requested that ORLT be substituted as interim trail sponsor in place of RTC. On March 31, 1997, an agreement between petitioners were entered into whereby ORLT agreed to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 C.F.R. § 1152.29. KCS consented to ORLT's replacing RTC as the interim trail sponsor. A copy of the extant NITU and a statement of willingness to assume financial responsibility were submitted by petitioners.

By decision and notice of interim trail use or abandonment served on June 17, 1997, the proceeding was reopened, the NITU served on December 22, 1994, was vacated and a replacement NITU was issued which substituted ORLT as the new interim trail sponsor for both branches.

¹ On March 29, 1994, KCS and RTC entered into an interim trail use/rail banking agreement for the entire corridor, including bridges and ballast.

In a notice filed on June 22, 2015, ORLT states that it wishes to terminate interim trail use on the entire 9.50-mile Baxter Springs Branch. ORLT requests that the Board partially vacate the NITU served on June 17, 1997, with respect to that branch and issue a replacement to apply only to the Waco Branch. In a response filed on June 30, 2015, KCS states that it does not oppose ORLT's request, and also does not wish to negotiate further trail use for the Baxter Springs Branch. Therefore, KCS may fully abandon the 9.50-mile Baxter Springs Branch from milepost 139.01 L at the connection with the KCS main line to the end of the line at milepost 148.51 L near Crestline, Kan., in Jasper County, Mo., and Cherokee County, Kan., and must notify the Board of the date of consummation.²

ORLT has complied with the requirements of 49 C.F.R. § 1152.29(d)(2). Accordingly, ORLT's request will be granted and a replacement NITU will be issued.

This decision and notice will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The NITU served in this proceeding on June 17, 1997, is vacated.
3. A replacement NITU applicable to ORLT for the Waco Branch line from milepost W 139.80 at the connection with KCS main line to the end of the line at milepost W 142.9 in Waco, in Jasper County, Mo., is issued.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the new sponsor's continuing to meet the financial obligations for the right-of-way.
5. If the trail sponsor intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. KCS may fully abandon the Baxter Springs Branch line from milepost 139.01 L at the connection with the KCS main line to the end of the line at milepost 148.51 L near Crestline, Kan., in Jasper County, Mo., and Cherokee County, Kan.

² KCS has 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier to consummate the abandonment of the Baxter Springs Branch line. 49 C.F.R. § 1152.29(e)(2).

7. This decision and notice is effective on its date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.